A DAY OF SENSATIONS

Humphreys Playing to Gallery Again.

(From Thursday's Daily.)

THERE were two sensations in the First Circuit Court yesterday morning. The first was the scoring of Attorney-General Dole by Judge Humphreys, and the second the ordering into custody of Lorrin A. Thurston.

The afternoon session was devoid of these features, lightened only by the appearance of General Hartwell. The crowds which filled the court room on the opening day of the cases were absent; there were few attorneys and only a small number of spectators in the room at the opening, and the way in which the day's work was opened was little to attract the crowds in itself.

The underlined attraction for the curtain-raiser was the closing speech of Attorney-General Dole in the matter of the Acting Governor and former Superintendent of Public Works McCandless. This came to the front early, for there was little business before the court. The setting of a few cases took little time of the court, and the result was that the Attorney-General began his finale soon after 10 o'clock. One feature of the first few minutes of the court's session was the setting straight of the entire matter of the power and authority of the Acting Governor in the opinion of the judge.

The Attorney-General was going on in his argument with the contention of Fitch that the secretary had little of authority or right in the holding of his office, when the judge of the court said that the question would not be taken up by him. Any disputation of the matter of the perfect authority of the Acting Governor would tend, he said, to discredit the action of that official and might lead to some complications in the matters of the finances, or other fundamentals which might arise out of the meeting of the Legislature. With this "hunch" the Attorney-General did not consume much time in the closing of his case.

COURT ABUSES ATTORNEY.

There was little feature in the closing remarks, and the friend of the court did not take up any time with sur-rebuttal, but allowed the matter to go to the court. The judge said first that he would take the case under proper advisement, as in matters of such importance there would be time needed for the proper adjusting of matters and the preparation of a decision. As at the beginning of the day the court dismissed the jury from attendance until Tuesday next, it is presumed that it will be until that time that the court will be busied with the decision in the case. After remarks bearing directly on the matter at issue the court turned its attention to the chief law officer of the Territory, and used some vigorous language.

The court stated that throughout his remarks the Attorney-General had apparently been addressing the audience in place of the judge. His attitude in some respects had shown contempt. The court had noticed it, but had not felt inclined to comment upon it even to the extent it plainly deserved. The court was at a loss to know why the Attorney-General had repeatedly referred to the powers of a Governor. If he imagined that a suggestion that the Governor could call on the United States army and navy would intimidate the court, he might well disabuse himself of the idea at once. Continuing the court said:

"Again the court says that anyone who stands at the bar of this court representing any power, officer or sovereignty who by threat or force attempts to intimidate this court, will fail in his purpose and will only inspire the court with unspeakable contempt not only for the argument, but for the author of it."

When the judge had finished his excoriation the Attorney-General rose and asked that his remarks be made of record, and continued that what he had said had been in the main the decisions of the highest courts of the country.

The court said that this would be done, and that as all would be submitted to the Department of Justice at Washington, he himself was desirous that there be nothing lacking in the records of the case.

THURSTON CASE CALLED

At the conclusion of the judge's statement the case of L. A. Thurston was called, and Attorney Hartwell presented the matter as follows:

The matter of L. A. Thurston, if the court please, presents a question of law, clear cut and impersonal. There is no controversy concerning the facts, the facts in substance being that the respondant having certain information, declined to testify, to answer the interrogatories, which would reveal that information, desiring to go as far as the law would permit him to go.

It is not a question of compelling the respondent to answer the interrogatories. Thus far no order of the court has been made upon the subject. The question is now presented whether the court will or will not order the testimony to be given. There is no possible question of contumacy on the part of this respondent. He is not interested himself at all in the matter. He has no rights in the matter. It is the question of what is his duty as counsellor, as a solicitor and as an attorney at law. The facts show that he has expressly requested his client to allow him to make known the information which he has received, and that the client refuses to allow him to do so, and that for reasons not stated, but which could easily be surmised, I fancy, it would result to the injury of the business interests of that client if that information were now made known. That is the position in fact.

Now, I do not propose to incur for myself the censure which I remember once hearing was given by our famous Chief Justice Shaw, of the State of Massachusetts, to a young lawyer who, after reading law to the Chief Justice for a considerable time, was finally told, "Young man, this court is presumed to know some law." I do not say that if I could secure the whole of that censure to myself at my time I might not wish to give cause for it; but what I mean is this; I do not propose to read to the court what the books are full of on the subject, the rules of law concerning the duties of counsel to client.

The Court—The court desires to say that it is not only entertained by General Hartwell, but is at all times instructed by him.

Mr. Hartwell—Thank you. The rule is very familiar; all the books on evidence have it, and all the books that treat upon the subject. I will say a word, if the court please, about the reason for the rule, and that is all.

BASEBALL LEAGUE NOW IN SIGHT

The Honolulu Athletic Club has secured temporary headquarters in the Elite building, where the trustees of the club will meet this evening at 7:30 o'clock.

A game of baseball will be played at Makiki next Saturday between the nines of the Honolulu Athletic Club and the Police Department.

Tomorrow evening representatives of the Honolulu Athletic Club, Police Department, Maile Ilima Athletic Club and the Young Men's Christian Association will meet at 7:30 o'clock in the rooms of the first-named club for the purpose of forming a baseball league.

The Honolulu Athletic Club's headquarters will be open to members next Saturday evening.

Work on the Kapiolani Park baseball diamond will be commenced as soon as a league has been formed.

In the tennis tournament yesterday the following results were obtained:

Gentlemen's doubles, Messrs. Hitchcock and S. G. Wilder won from Messrs. Prosser and Rice by default, the former player not being in town.

On the Beretania Tennis Club's courts Messrs. Castle and Canavarro won from Messrs. J. P. Cooke and S. P. Wilder by default.

Messrs. Fuller and Cheek defeated Messrs. Irvine and Lansdale 6-3, 6-4.

The mixed doubles between Mr. and Mrs. Elston and Frank Atherton and Miss Gertrude Scott fell through on account of the illness of Frank Atherton. Mr. and Mrs. Elston refused to accept the game by default and the contest will take place later.

On account of rain there was no work done at the track yesterday with the exception of a few slow heats by Waldo J.

The excellent mile recently shown by George Carter's pacer—2:25, last half, 1:07½—makes him a possibility for the 2:14 class.

WORE THEM OUT HERSELF.

There was a time when Mrs. Hayes considered herself to be what she calls "a gone woman." She actually divided her clothes and other personal effects among her children. Thank Goodness—but here is her story, told in her own way; by all odds the best way.

"Three years ago, she says, "I had dreadful pains across the left side of my stomach and under the shoulder-blades. My left side swelled up fearfully. I was laid up weeks at a time, work being out of the question. While these fits were on I could neither walk, sit, nor stand with comfort.

"I was really ashamed to let the neighbors see me crawling about; so I spent most of my time lying down or leaning against something to ease the dreadful pains.

"I had been a hard-working woman all my life, but now I lost my strength and dreaded to eat anything, knowing the woeful suffering I was sure to experience afterwards; as if eating were somehow a crime against the laws of nature. And at night I rolled and tossed about instead of sleeping.

"The doctor said it was indigestion and no doubt he was right, but he was not able to relieve me.

"I considered myself a 'gone woman' and told my husband I was sure I could not last much longer. Indeed, I was so fully persuaded of this, that I actually divided my clothes and personal effects among my children.

"Thank Goodness and Mother Seigel's Syrup I have since worn out most of them myself.

"After a lot of coaxing and argument (for I was tired of trying things, and hope had about died away in my heart) I consented to take Seigel's Syrup, although the doctor had advised me not to touch it.

"I was not quite sure of the effect of the first bottle, but my husband insisted on my going on with it. So I did go on with it, and after I had got through half the second bottle there was no doubt of the result. I was much better; I felt it, and others could see it.

"It was hardly short of a miracle, the way Seigel's Syrup brought me round. From a poor, weak, and wretched woman, unable to walk or scarcely to raise my hand to do the smallest piece of work, it gave me back health and strength, restored me to my husband and family, enabled me to go on with my work once more, and, in short, made me as well as ever I was in my life.

"I am now upwards of 60, and have reared a large family. I have lived in the district about 37 years, and am well known here.

"My husband and sons, as well as our grandchildren, work in connection with the coal mines, for which this district is noted. I have told all the neighbors what Seigel's Syrup did for me, and am perfectly willing that my case should be published if you think it may be useful" (Mrs.) Julia Hayes, Mount Keira, Paradise, near Wollongong, N. S. W. October 14th, 1899.

Mr. John Hickey, blacksmith, at the same place, writes that he has known Mrs. Hayes all his life, and (in common with many others) knows her statement to be true. He adds that she is respected by everyone.

Witness—"Fined for contempt of Court! Why, I didn't say a word. Rural Judge—That's just it. You didn't answer my questions, an' that's how you showed yer contempt." Witness—"Well, well! And I flattered myself that in that way I was concealing it!"

COURT NOTES.

(From Wednesday's Daily.)

COURT NOTES.

John S. Prendergast, administrator of the estate of Kaalewai Pearson, has filed his final account, charging himself with $200 and asking to be allowed $120.25, and petitioning for allowance of accounts and final distribution and discharge. An order has been issued giving notice that the hearing of such petition will be had on Monday, July 1, at 10 o'clock a. m.

The defendant in the case of J. A. Magoon vs. Louis Marks has filed his bill of exceptions and transcript on appeal.

DIVORCE PROCEEDINGS.

In the action for divorce of Libana de Nobrega vs. Sylvano de Nobrega, the defendant yesterday filed an answer to the amended complaint of plaintiff.

In addition to the general denial of all the allegations of the complaint, the defendant alleges that on April 13, 1899, he conveyed by deed, in fee simple, to Joe de Nobrega, son of plaintiff and defendant, a certain house and lot in Nuuanu valley of the value of $3,500, with the object, purpose and understanding that the same would immediately be conveyed to the plaintiff for her sole use, benefit and maintenance; the said premises were so conveyed on April 13, and that she has ever since been in possession of same.

Also that from September 28, 1898, to January 25, 1901, defendant paid to plaintiff the sum of $6 per week for their support and maintenance, and that ever since the latter date he has been at all times ready and willing to pay the same, although plaintiff has failed to demand and receive said $6 per week.

J. M. Long is attorney for the defendant.

CHRISTLEY VS. MAGOON DECISION.

The Supreme Court yesterday rendered decision in the equity case of Thomas Christley vs. J. A. Magoon and Emmeline M. Magoon, which was submitted on December 26, 1900. The decision was in favor of Christley.

The case was a suit to cancel a deed dated November 2, 1898, from plaintiff to defendant Emmeline M. Magoon of 2.47 acres of land on the easterly side of Fort street, between School and Vineyard streets, in Honolulu; the consideration named in the deed was $10,000, although the real consideration was an oral promise to pay the plaintiff's debts, amounting to $4,000 and a written promise to pay the plaintiff $75 per month for the remainder of his life.

The deed was held to have been procured through undue influence, as shown by the existence of the confidential relationships of attorney and client and principal and agent between the parties, the mental weaknesses of the plaintiff and the inadequacy of the consideration.

The grounds relied upon are fraud and mistake.

The opinion is by Justice Frear, and Judge Edings sat in place of Justice Perry, disqualified. Hatch and Silliman and J. T. De Bolt were attorneys for the plaintiff, and Kinney, Ballou & McClanahan for defendant.

The syllabus of Justice Frear's opinion shows that for two years preceding the execution of the deed J. A. Magoon had been the plaintiff's agent in respect to the plaintiff's property in question, collecting rents, paying taxes, etc., and advising him professionally in matters of law; that plaintiff trusted him implicitly; that plaintiff was simple and absent-minded and susceptible to influence; that plaintiff's wife had left him and that he was worried with money troubles and cares; that he was 60 years of age, and was a carpenter and a dairyman; that he worked hard and was troubled with ill-health; that he was greatly discouraged; that his property had been purchased with his own hard earnings; that on October 31, 1898, the defendants paid plaintiff a visit and after talking over the plaintiff's troubles, an agreement was entered into, whereby the defendants offered to pay him $75 per month for the remainder of his life, and to pay off his $4,000 debts in return for the property; that the plaintiff, wishing to escape the cares and responsibilities of the property, agreed to this and signed the deed, the consideration being grossly inadequate to the worth of the property, the rentals alone bringing in $113 or more per month, and the property of the value, at the minimum estimate, of $25,000; that subsequently plaintiff's wife returned to him and they became reconciled, and that plaintiff's eyes were then opened to the nature of the business deal he had made. The opinion then concludes:

"We need not go into the question as to whether the plaintiff, as he now claims, thought he was signing a deed in trust for his children, subject to the payment of $75 a month to him for life out of the rents. There is certainly much evidence that it is difficult to reconcile with that theory, as well as some in support of it. We may even assume that the defendants thought they were being magnanimous toward the plaintiff, at least to the extent of thinking that the new arrangement was better for him, considering all his troubles, than the old. But in view of the then existing relationship of principal and agent with reference to this property, the relationship of attorney and client, the plaintiff's weaknesses and his trust in the defendants, the defendants' interest in the transaction, and the inadequacy of the consideration, equity must on well-established principles undo the transaction. The presumption from such relationships is against the defendants. It is for them to show adequacy of consideration and that the parties were dealing with each other at arm's length or that they advised and acted with reference to the plaintiff's interests, as if the latter had been dealing with a third party. The plaintiff, while he may have understood that that was done which was done, apparently did not fully realize what it all meant. He trusted to the defendants to do what was best for him. The presumption of undue influence arises from the existence of the fiduciary or confidential relationship. Such relationship in this connection has a broad meaning. It includes the relationship of attorney and client and even that of principal and agent. The presumption is stronger where the relationship exists in respect of the property in question, where the party claiming to be injuriously affected is mentally inferior to the other, and where the consideration paid is not clearly adequate. This presumption arises in the present case and has not been overcome.

"The defendants further rely on ratification or acquiescence, on the ground that if he did not realize what was done at the time, he did afterwards and yet continued to accept for several months the payments of $5 a month and to recognize the transaction in other ways. A complete answer to this is that the influence which the defendants exercised over the plaintiff and the confidence he reposed in them continued during this period. He was, as already noted, living with the defendants in their home. He does not appear to have acted with any intent to recognize the validity of the transaction after he was removed from such influence.

"The defendants further rely on the plaintiff's failure to tender to the defendants what they had paid out under the agreement, on account of debts or the annuity. The plaintiff in his bill alleges that he had requested the defendant, Mr. Magoon, for an account, but that the latter had failed to render one, and he prays for an accounting. The defendants had been in possession and received the rents of the land and, for aught that the plaintiff knew, so far as appears, had received more than they paid out. The defendant, Mr. Magoon, testified that the mortgage debt, which was more than half of the $4,000 indebtedness, was not paid until after the suit was commenced. At the hearing the plaintiff offered to pay all that the defendants had paid out under the agreement. Apparently no question as to tender was raised in the lower court. The Court decreed not only that the deed was null and void and that it be set aside and cancelled, and that the defendant, Mrs. Magoon, be a trustee for the plaintiff of the property in question, and that the defendants execute a deed of the property to the plaintiff, and account to him for all moneys received by them therefrom and as his agent, but also made all these conditional upon his paying to them or into court all sums paid by them towards the $4,000 debts and $75 payments. Under these circumstances the defendants are amply protected, and it would not be equitable to allow them to now rely upon failure to make a tender prior to bringing the suit.

"Of course those who took leases of the property from Mrs. Magoon after she acquired title under the deed in question would not be affected by the decree in this case, for they are not parties. We presume, also, that they would not be affected even if they were parties, for the reason that they took innocently. But it may be that if the deed were set aside as null and void at the time of its execution, Christley would technically have a right of action against the Magoons for having made the leases, even though he might be able to recover only nominal damages, for apparently the leases were made on terms as favorable to the lessor as could be obtained. He who seeks equity must do equity. Christley was not altogether blameless. He was aware of the execution of the leases and while we do not go so far as to hold that his knowledge and failure to object operates as an estoppel against his setting up undue influence, because the undue influence continued, yet he may as a matter of equity be given relief only on condition that he place the defendants as far as possible in their former position. He has elected to come into equity rather than go to law. In our opinion it will be as much as he can fairly ask so far as the deed is concerned to have Mrs. Magoon declared a trustee for him and to convey the property to him subject to the leases, and not to declare the deed null and void and order it cancelled.

"The case is remanded to the Circuit Judge with directions to modify the decree in conformity with these views and for such further proceedings as may be proper."

"A woman with a pet dog can make more kinds of a fool of herself than any other being under the sun," sayagely remarked one of the salesmen in a Chestnut street jewelry store yesterday. "A girl with an ugly brute of a bulldog came in this morning and said she wanted to look at garters. I showed her several very handsome pairs, but she said she wanted three, all alike. I thought she meant three pairs, but it turned out that she wanted three garters, one for herself and one to match them for her dog. A friend of hers who had just returned from abroad had told her that it was quite the thing in Paris and London for dogs to wear garters on the left forelegs to match those worn by their owners. Did you ever hear of such idiocy? Of course the garters were much too large for this girl's pet, and she decided that she would have one made to order. She felt herself to be very much aggrieved because we would not undertake the commission for her, and she flounced out of the store in a petty rage."—Philadelphia Record.

BEWARE OF A COUGH.

A cough is not a disease, but a symptom. Consumption and bronchitis, which are the most dangerous and fatal diseases, have for their first indication a persistent cough, and if properly treated as soon as this cough apepars are easily cured. Chamberlain's Cough Remedy has proven wonderfully successful, and gained its wide reputation and extensive sale by its success in curing the diseases which cause coughing. If it is not beneficial it will not cost you a cent. For sale by all dealers and durggists. Benson, Smith & Co., Ltd., general agents, H. T.